

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARK L. EMMONS,

Petitioner,

vs

9:09-CV-675

DALE ARTUS,

Respondent.

APPEARANCES:

OF COUNSEL:

MARK L. EMMONS

Petitioner, Pro Se

05-B-1832

Clinton Correctional Facility

P.O. Box 2002

Dannemora, NY 12929

HON. ERIC T. SCHNEIDERMAN

Attorney General of the

State of New York

Attorney for Respondent

Department of Law

The Capitol

Albany, New York 12224

LEA L. LaFERLITA, ESQ.

Asst. Attorney General

DAVID N. HURD

United States District Judge

DECISION and ORDER

The petitioner, Mark L. Emmons, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the above action. By a report-recommendation dated January 10, 2011, the Honorable David R. Homer, United States Magistrate Judge, recommended that the petition for a writ of habeas corpus be denied. Petitioner has filed timely objections to the report and recommendation, as well as a motion to amend/correct the petition (Docket No. 17) and a motion for an evidentiary hearing (Docket No. 19).

Based upon a de novo determination of the report and recommendation, including the portions to which petitioner has objected, the Report-Recommendation is accepted and adopted in whole. See 28 U.S.C. 636(b)(1); Rule 10, Rules Governing Section 2254 Cases.

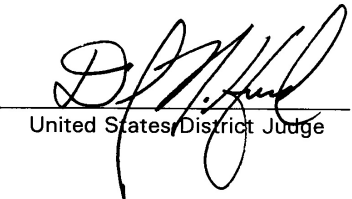
Therefore, it is

ORDERED that

1. The petition of Mark L. Emmons is DENIED;
2. The petition is DISMISSED;
3. Plaintiff's motion to amend/correct the petition (Docket No. 17) and his motion for an evidentiary hearing (Docket No. 19), are DENIED as moot.
4. A Certificate of Appealability will not be issued in this matter; and
5. The Clerk is directed to enter judgment accordingly and close the file.

IT IS SO ORDERED.

Dated: March 8, 2011
Utica, New York.



United States District Judge